

### III. REMARKS

The Assignee presents amendments to the claims above as well as remarks below in response to the Office Action of October 28, 2008. Claim 1, 7 and 25 are currently amended, claim 27 has been newly added and an additional claim fee is being paid herewith, and claims 1-14 and 27 are currently pending. Assignee affirms election of claims 1-14 directed to Group 1 of the restriction without traverse as provisionally elected in the telephone conversation. All claims as well as new claim 27 are readable upon the elected invention. Claims 15-22 and 24-25 have been withdrawn.

The action details concerns to the claims under 35 USC §102. It was expressed that the Buchanan reference (US 6,604,435) describes the claimed invention and that it discloses the “possibility of adjusting the injection point” as stated in the action. As clarified in the amendments to claim 1, the claim states, *inter alia*, “selectably variably adjusting said injection point of said sperm cells in said fluid stream.” This is very different from the Buchanan reference where it discusses an injection point but never discusses a device or method with a built in adjustment feature. It would take re-tooling of the device in the Buchanan reference in order to provide a selectable and variable adjustment capability of the injection point. Contrarily, the present invention provides an easy adjustment of an injection point for sperm such that an operator can selectably and variably adjust the injection point as needed. Specifically, a selectably variable adjustment may be achieved with a particle injector in a variety of ways such as but not limited to a pair of mated spiral threads engaged between a particle injector and a nozzle body, a slidable engagement between a particle injector and a nozzle body, and perhaps even a keyed stop mated with a nozzle body. These are all examples of how an easy adjustment of an injection point may be achieved. This was not discussed by the Buchanan reference. It is therefore respectfully asserted that independent claim 1 is novel over the cited references.

Since it is believed that independent claim 1 is novel and claims 2-14 are ultimately dependent upon claim 1, it is believed that claims 2-14 are also novel over the art in that they each incorporate by reference all the limitation of the claims to which they are dependent. See

37 C.F.R. §1.75(c). Should the office require further explanation, the Assignee stands ready to supplement the above remarks if necessary.

#### Additional Information

The amendments submitted herein or in any previous response should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Assignee expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any preliminary amendments, other amendments, claim language, or arguments presented, thus there is not intention to disclaim or surrender any potential subject matter. It should be understood that such broader claims may require that any relevant prior art that may have been considered may need to be re-visited since it is possible that to the extent any amendments, claim language, or arguments presented in this application are considered as made to avoid such prior art, such reasons may be eliminated by later presented

claims or the like. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or disclaimer is intended or exists in this application. Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

## CONCLUSION

The Assignee believes the pending claims to be in a condition for allowance and respectfully requests an allowance at the examiner's earliest convenience. Should any outstanding issues remain, the Examiner is invited to telephone the Assignee's representative, Nicole Ressue, at the phone number stated below.

Dated this 29<sup>th</sup> day of April, 2009.

Respectfully Submitted,  
SANTANGELO Law Offices, P.C.

By: /Nicole A. Ressue/  
Nicole A. Ressue  
Attorney for Assignee  
PTO Reg. No.: 48,665  
125 South Howes, Third Floor  
Fort Collins, Colorado 80521  
(970) 224-3100